THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5326 OF 2003

DATED:5.8.2005

Between:

M. Hanumanth Rao

…Petitioner

And

The Deputy Commissioner of Police, North Zone, Hyderabad,

and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5326 OF 2003

ORDER:

The writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents in opening rowdy sheet against the petitioner in P.S. Bollaram, as illegal and void.

The petitioner is allegedly active member of Telugu Desam party. At the instance of one Mr. Raj Kumar Goud, petitioner was falsely implicated in Crime Nos.19 of 1996 of P.S.Bollaram, Crime No.150 of 1996 of P.S. Alwal, Crime No.98 of 1997 of P.S. Alwal, Crime No.48 of 1997 of P. S. Kharkhana and Crime No.169 of

1997 of P.S.Thirumalgherrya, and all the cases ended in acquittal. Two rowdy sheets -- one in P.S. Alwal, and another one in P.S.Bollaram -- were opened against petitioner. Hence, he approached this Court by filing Writ Petition No.6464 of 2001 to close the rowdy sheets. Said Writ Petition was disposed of by this Court on 10.4.2001 directing second respondent therein to consider the case of petitioner in view of current records in the light of relevant Police Standing Orders within six weeks. Presumably in compliance thereof, rowdy sheet opened against petitioner in P.S. Alwal was ordered to be closed. However, the rowdy sheet opened in P.S. Bollaram is not yet closed. Hence, present Writ Petition.

A counter affidavit is filed by the respondents stating that the rowdy sheet opened against petitioner in P.S. Bollaram is being continued after examining the matter in detail by superior police officers as petitioner is an habitual offender, and the action taken by Police is strictly in accordance with the law.

The questions raised in this writ petition are squarely covered by the judgment of this Court in **S. Satyanarayana v. State of A.P.**. Therefore, the writ petition is disposed of directing the respondents to consider the request of the petitioner for closing rowdy sheet following the principles laid down in **Satyanarayana**'s case (supra), which are as under.

i. A mere conviction or convictions cannot be thumb rule for opening history sheet or rowdy sheet though history sheet can be opened even without conviction for the limited purpose of watching a person discreetly.

ii. At the time of opening a history sheet or rowdy sheet a competent officer has to apply mind taking into consideration the social background the proceedings in the criminal trial if a person is convicted and all other relevant material before passing orders for opening history sheet or rowdy sheet.

iii. A history sheet/rowdy sheet is retained for the period of two years only unless it is ordered to be closed by the Superintendent of Police earlier than two years. During the initial period of two years, the history sheeter or rowdy sheeter is entitled to request the concerned police officer to close the history sheet or rowdy sheet which has to be considered by the police officer in an objective manner.

iv. While passing orders for retention of history sheet for another year more, the competent Sub-Divisional Police Officer has to take into consideration the various factors, to wit, surveillance reports, the crime history with reference to the breach of peace of society during the preceding year, the social and political background of the person etc. If there is a preponderance of opinion among the surveillance officers that the person did not come up for any adverse notice and leading a blemishless family life it is a strong circumstance to order for closure of the history sheet or rowdy sheet.

v. When an order is passed by the competent police officer for retention of the history sheet by simply endorsing on the report/letter of the S.H.O. a single line order, that by itself cannot be a ground to continue the rowdy sheet.

vi. Any order passed by the Sub-Divisional Police Officer shall have to be supported by reasons. The reasons need not be communicated but to be recorded.

vii. The orders for opening or retention of history sheet/rowdy sheet are passed under the administrative instructions/guidelines. If such an order is challenged, the competent authority has to place the reasons before the Court which justify retention of history sheet/rowdy sheet. Further, it is always better for the Police Officer to record his own reasons for retention/opening of the history sheet/rowdy sheet.

viii. In the event as mentioned in conclusion 4.7 it is always open to the Court of judicial review to direct the Sub-Divisional Police Officer to reconsider his decision and pass appropriate orders. But whatever be the events in the guise of opening/retention of history sheet a person's liberty, right to privacy and other freedoms under Article 19 of the Constitution of India cannot be infringed under any circumstances.

ix. It is to be remembered that any order of the competent police officer which is not supported by reasons is itself unreasonable and arbitrary and can be termed as mala fide in the sense that it is contrary to the purpose for which the Police Officer is authorised under relevant Police Standing Orders. Hence, if the Court comes to the conclusion that the order of the Sub-Divisional Police Officer is contrary to the purpose for which surveillance is authorised, the action shall be set at naught forthwith on the principle that what is unreasonable and unfair is arbitrary and such arbitrary exercise of power amounts to exercising, the power mala fide.

The petitioner is, however, at liberty to approach the jurisdictional Assistant Commissioner of Police, Hyderabad, if the same is still continued. While considering the case of the petitioner, concerned Assistant Commissioner of Police may also consider the order of this Court in W.P.No.6464 of 2001, dt.10.4.2001.

The writ petition is accordingly disposed of. No costs

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2005. (V.V.S.RAO, J)

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